HARVEY E. YATES CO.

IBLA 94-145 Decided April 30, 1997

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, upholding issuance of Notices of Incidents of Noncompliance Nos. NM-067-94-DE-006 and NM-067-94-DE-008 (SDR 94-003).

Reversed.

1. Oil and Gas Leases: Incidents of Noncompliance

An incident of noncompliance issued for having an unapproved emergency pit at a well site will be reversed where the record discloses that the pit was a workover pit constructed in conjunction with reworking operations on the well conducted pursuant to a sundry notice filed with BLM and approved for the record prior to issuance of the citation.

2. Oil and Gas Leases: Incidents of Noncompliance

Water that is removed from the bore of an oil and gas well may be considered to be produced water even though it was brought to the site by the operator and injected into the well as part of a reworking of the well. However, an incident of noncompliance citing the operator for failure to obtain approval for disposal of produced water under NTL-2B will be reversed when the water has been kept on-site in a tank and no attempt has been to dispose of the water.

APPEARANCES: Ernest L. Carroll, Esq., Artesia, New Mexico, for Appellant; Arthur Arguedas, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Harvey E. Yates Company (Yates) has appealed from a November 1, 1993, Decision of the Deputy State Director, New Mexico State Office, Bureau of Land Management (BLM), upholding two Notices of Incidents of Noncompliance (INC's) issued by the BLM Carlsbad Resource Area Office. Yates appeals the issuance of the INC's arguing that they did not identify a violation of the terms of relevant statutes, regulations, leases, or notice to lessees.

On October 12, 1993, a field inspection was conducted of the Travis Deep Unit No. 4 well site, which led to issuance of the INC's. Yates requested a State Director review of those INC's, both of which cited Yates for minor violations of Notice to Lessees (NTL) 2B 1/ and the regulations at 43 C.F.R. § 3162.5-1. The first INC (NM-067-94-DE-006) cited Yates for having two emergency pits on the location when there was approval for only one. The corrective action required by the INC was to remove trash from the emergency pit south of the well, dispose of the trash properly, and then backfill and level the pit. The record reflects that the pit was cleaned and backfilled as of October 15, 1993. The second INC (NM-067-94-DE-008) cited Yates for failure to have a method of water disposal on the record. The corrective action required was to submit an application for approval of the method of disposal. This record indicates an application was subsequently filed with BLM on October 19, 1993. Both INC's were upheld by the Deputy State Director, Lands and Minerals, in the Decision on appeal.

On appeal, Yates contends that INC NM-067-94-DE-006 incorrectly cited it for having two emergency pits on the location. It asserts that the pit for which it was cited was in fact a workover pit recently used in reworking operations conducted on the well in 1993 2/ and that it was not an emergency pit. Yates notes that by a copy of Sundry Notices and Reports on Wells (Form 3160-5) (sundry notice) filed with BLM on August 19, 1993, (Ex. 5 to Brief on Appeal), it notified BLM of its intent to workover the Travis Deep Unit No. 4 Well. The sundry notice was accepted for the record by BLM on October 4, 1993. Yates argues that an emergency pit may not be used for normal workover procedures.

Yates maintains that the construction and use of the workover pit was considered a necessary and accepted part of the workover process and that the pit was dry and awaiting reclamation (refilling and grading) at the time the citation was issued. Yates also asserts that it is the general practice of operators to dig pits in conjunction with drilling, redrilling, reworking, deepening, or plugging well operations. Further, Yates points out that section VI of NTL-2B specifically authorizes the temporary use of unlined surface pits for handling or storage of fluids used in drilling, redrilling, or reworking a well. It also asserts that NTL-2B does not require a special permitting process for such temporary surface pits.

1/ 40 Fed. Reg. 57814 (Dec. 12, 1975). Although NTL-2B was superseded effective Oct. 8, 1993, by Onshore Oil and Gas Order No. 7, 58 Fed. Reg. 47354, 47359 (Sept. 8, 1993), BLM concedes on appeal that the operations at issue were commenced before that date and are governed by the provisions of NTL-2B.

2/ The well at issue was originally drilled pursuant to an application for permit to drill (APD) approved by the Department of the Interior on Sept. 28, 1978.

With respect to the INC involving produced water, Yates asserts that the water is not properly considered to be produced water covered by NTL-2B and that, even if it is encompassed in a broader definition of produced water, no arrangement had been made for disposal of the water at the time the INC was issued and, hence, the INC was improper. Yates states that the well has never produced any water in its 15-year history. The water at issue is water that Yates transported to the site and injected into the well to aid in the recompletion process. It is noted that the water at issue was situated in a steel production tank since it is the last of the injected water which was recovered on resumption of production of hydrocarbons. Yates insists that this water is properly distinguished from produced water within the meaning of NTL-2B, which includes water actually produced from the formation from which the production of hydrocarbons was being obtained. In support of its contention, Yates has produced a copy of a checklist for approval of disposal of produced water noting that the information required by BLM as part of the approval process includes the name of the formation producing the water and the number of gallons per day produced.

In response, BLM argues that water collected from a well requires proper disposal regardless of origin. Moreover, BLM points out that an inspector cannot tell if water in a tank is produced or workover water. In this case, BLM says both hydrocarbons and water were stored in the same production tank, and in order to remove the hydrocarbons, the water would have to be removed and disposed of properly, requiring a permit.

In his review of the citations, the Deputy State Director concluded that the fact that the pit was a workover pit and not an emergency pit was not germane because under 43 C.F.R. § 3162.5-1(a) operations must comply with an approved plan. He upheld the citation for the assertedly unapproved pit, finding that Yates only had approval for one pit on this location. In its answer to Yates's brief, BLM similarly does not argue that the second pit on the site is an emergency pit. It is acknowledged by BLM that a workover operation necessarily involves a pit and that its acceptance of Yates's sundry notice of intent to conduct a workover operation can be construed to be an acceptance of the construction and use of the workover pit. However, BLM contends that either type of pit requires specific approval under section VI of NTL-2B. Regarding the water found in the production tank, the Deputy State Director found that the method of disposal of water requires approval regardless of whether or not the water leaves the location. Hence, he upheld the citation for failure to obtain approval of a means of disposing of that water.

[1] As a threshold matter, we note that INC NM-067-94-DE-006 was issued for having two emergency pits when there was approval for only one. Appellant was not cited for having an unauthorized workover pit, yet the record establishes and BLM acknowledges that the pit at issue is a workover pit, not an emergency pit. Thus, on its face the INC is improper. The burden is upon the appellant to establish error in the INC under appeal.

See Grynberg Petroleum Co., 137 IBLA 81 (1996). This burden is satisfied when an operator has shown that a pit which was cited as an unapproved emergency pit was in fact a pit associated with well drilling operations authorized in an APD. Yates Petroleum Corp., 91 IBLA 252, 260-61 (1986). In this case, Yates has shown that the cited pit was a workover pit associated with reworking operations on the well. These operations were performed pursuant to a sundry notice filed with BLM in August 1993 and accepted for record by BLM in October 1993 prior to issuance of the citation. In these circumstances, we find that Yates has sustained the burden of showing that the INC was issued in error. Cf. Pete V. Carlson, 136 IBLA 214 (1996) (A decision imposing administrative sanctions against the holder of a permit is properly vacated where the record does not support the basis given by BLM for invoking sanctions).

Although BLM contends, on appeal, that it is "common practice" to require specific approval of a workover pit under section VI of NTL-2B, we find no language in NTL-2B to support such an assertion. Section VI of NTL-2B is entitled "Temporary Use of Surface Pits." Paragraph 1 of section VI states that "[u]nlined surface pits may be used for handling or storage of fluids used in drilling, redrilling, reworking, deepening, or plugging of a well provided that such facilities are promptly and properly emptied and restored upon completion of the operations." (NTL-2B, § VI, ¶ 1.) Although NTL-2B specifies that mud or other fluids in the pits may not be disposed of by "cutting the pit walls" without prior authorization, it does not contain any express requirement for authorization of such pits other than that associated with acceptance of a sundry notice for reworking the well. The only mention of authorization for pits is in paragraph 2 of section VI, which states that if the pits are retained as emergency pits they require authorization.

[2] The second INC on appeal, INC NM-067-04-DE-008, was issued for failure to have an approved method of disposal on file with BLM for the produced water found in the production tank. There is no definition of the term "produced water" either in NTL-2B or in the regulations. The NTL does speak of water produced from oil and gas wells, and standing alone that phrase might be read to support Yates's definition of water actually produced from the formation from which the production of hydrocarbons is being obtained. However, while the purpose of NTL-2B is not explicitly stated in the NTL, it is clear that the purpose is to ensure that water that may be contaminated is disposed of in such a fashion as not to endanger ground or surface water or animal, plant, or aquatic life. See, e.g., NTL-2B, IV (1), (3). The history of NTL-2B supports this view. When NTL-2B was promulgated it was based on authority prescribed in 30 C.F.R. § 221.4 and § 221.32 (1975). 3/ The regulation at 30 C.F.R. § 221.32

3/ The regulation at 30 C.F.R. § 221 was redesignated and amended at 48 Fed. Reg. 36583, 36584 (Aug. 12, 1983).

dealt specifically with pollution and surface damage, stating that the lessee shall not pollute streams or underground water or damage the surface, and it dealt with the disposal of useless liquid products of wells. The requirement of water analysis in NTL-2B, regardless of the method of disposal chosen, shows that the concern was to protect the environment.

To declare that water which has been brought to the site and used in the reworking of a well does not have to be disposed of in accordance with NTL-2B would be to declare such water is of no environmental concern, which is contrary to the purpose of NTL-2B and the regulations at 43 C.F.R. § 3162.5-1, which require the operator to conduct operations in a manner which protects environmental quality. Water which has been injected into the well may be as contaminated as any water that comes from the formation. Yates says that once the bulk of the water it injected was recovered it hooked the well up to the production line to minimize the waste of hydrocarbons in conjunction with the recompletion process. This meant that the remaining water would be recovered after the well was put back in production and would be mixed in with the hydrocarbons and thus produced with those hydrocarbons. Therefore, we are unable to interpret the term produced water to exclude any water which emerged from the well bore even though the water at issue was brought to the site by Yates and injected into the well.

However, this is not dispositive of the appeal of INC NM-067-04-DE-008. The NTL requires that all produced water be disposed of in a method approved in writing. 4/ Nowhere does NTL-2B state when that approval must be obtained, other than prior to disposal. The water at issue was contained in a steel production vessel and evidently no attempt had been made to dispose of the water. Yates states, and BLM does not contradict, that no water had been moved off the location or out of this production vessel, nor any action taken whatsoever with respect to it. We find no basis in NTL-2B or the regulations at 43 C.F.R. § 3162.5-1 to sustain the INC in the absence of an effort to dispose of the water without obtaining approval. See Craig McGriff Exploration, Inc., 132 IBLA 365, 368-69 (1995). 5/

4/ This is consistent with the relevant regulation which provides that "[a]ll produced water must be disposed of by injection into the subsurface, by approved pits, or by other methods which have been approved by the authorized officer." 43 C.F.R. § 3162.5-1(b) (emphasis added).

5/ In the McGriff case, the INC was sustained after finding that neither the sundry notice nor other documents requesting approval of the means of disposing of water produced from the well had been filed with BLM prior to the citation, despite ongoing production from the well.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed and the INC's are vacated.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge